IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9372 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MISHRARAM @ RAJU PUKHRAJ PUROHIT

Versus

COMMISSIONER OF POLICE

Appearance:

MS BANNA S DUTTA for Petitioner

Mr.POOJARI, A.G.P for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/04/2001

ORAL JUDGEMENT

1. The petitioner came to be detained by virtue of an order passed by Commissioner of Police, Ahmedabad City on June 7, 2000 in exercise of powers under Section 3 sub Section 1 of the Prevention of Anti Social Activities

Act, 1985 (for short 'PASA Act'). Aggrieved by the said order of detention the petitioner has preferred this petition under Article 226 of the Constitution of India assailing the order on various counts.

2. The grounds of detention indicate that the detaining Authority took into consideration 10 offences registered against the detenu under Section 379 of the Indian Penal Code for theft of two wheelers. The detaining Authority also took into consideration statements of two anonymous witnesses in respect of two incidents dated April 28, 2000 and May 14, 2000. The detaining Authority found that the activities of the petitioner are that of a dangerous person which adversly affect the maintainance of public order. The detaining Authority considered the possibility of resorting to alternative less drastic remedy, but ultimately came to a conclusion that it is not possible to resort to such less drastic remedy, as the petitioner is required to be immediately prevented from pursuing his illegal Anti Social Activities. The detaining Authority recorded a satisfaction that the incidents narrated by two anonymous witnesses were genuine and that these witnesses suffered from a genuine apprehension and fear from the petitioner in respect of their person and property and therefore it was necessary to exercise powers under Section 9 (2) of the PASA Act by not disclosing the identity of these witnesses. Accordingly the identity of these witnesses was not disclosed and order of detention was passed.

3. Ms. Dutta appearing for the petitioner submitted that the order of detention suffers mainly from two defects. First is that the satisfaction recorded by the detaining Authority about the activities of the detenu being that of a dangerous persons is not genuine. She submitted that the detaining Authority has relied on the 10 offences registered against the detenu. All these offences are in relation to theft of two wheelers involving the petitioner. She submitted that each of these cases are individual in character and do not involve any disturbance to the public order. At the most they can be said to be relating to law and order situation and not public order situation. She submitted that the detaining Authority has over looked this aspect. So far as the statement of the anonymous witnesses are concerned Ms.Dutta submitted that the detaining Authority has exercised powers under Section 9 (2) of the PASA Act by stating that the fear expressed by the witnesses is found to be genuine. She however submitted that the affidavit in reply does not disclose anything to support such contentions in the grounds of detention. The

affidavit of the detaining Authority does not disclose the details of the material considered by the detaining Authority for arriving at the satisfaction about genuineness of fear and the need for exercise of powers under Section 9 (2) of the PASA Act. In support of her submission she has relied on MOHMAD SARIF @ KALIO NUMOHMADSARNIBAPU SHAIKH Vs. COMMISSIONER OF POLICE 1997 (1) G.L.H. 1017. She urged that the petition may be allowed and the detenu may be set at liberty.

4. Mr. Poojari, learned A.G.P. has opposed this petition. He submitted that if the affidavit in reply is seen the detaining Authority has called these witnesses and has recorded a satisfaction about the genuineness of the statement made by the witnesses. He submitted that the powers under Section 9 (2) are exercised only thereafter and therefore the petition may be dismissed.

5. Having regard to the rival side contentions and considering the grounds of detention it is amply clear that the detaining Authority has relied on the 10 offences registered against the detenu as well as statements of two anonymous witnesses.

6. Firstly considering the 10 registered offences it is clear that these offences relate to theft of two wheelers. The charge against the accused is of theft under Section 379 of Indian Penal Code. There is nothing to indicate any disturbance to public order in respect of any of these incidents for which offences are registered. These cases, therefore, can be said to have something to do with law and order situation rather than a public order situation. They can not be grounds for detention. The detaining Authority therefore could not have relied on these offences for arriving at a conclusion that the activities of the detenu are that of a dangerous person.

7. Going to the statements of the two anonymous witnesses, the witnesses have narrated certain incidents to indicate that the petitioner is involved in the activities which have resulted into disturbance to public order. The detaining Authority has categorically stated in his affidavit that he has personally verified the genuineness, correctness and veracity of the incident narrated in the statement of witnesses in the unregistered case by calling the said witnesses to his office and has found the said facts to be genuine and believable. This would indicate that the detaining Authority was satisfied about the correctness and the genuineness of the incident narrated by the witness. There is not a word in the affidavit in reply about the

satisfaction arrived at by the detaining Authority about the genuineness of the fear expressed by the witnesses qua the detenu and the need for exercise of powers under Section 9 (2) of the PASA Act. Apart from this the detaining Authority is required to undertake an exercise and then exercise the powers under Section 9 (2) of the PASA. Act by weighing the fear expressed by the witnesses on one hand and the right of the detenu of making an effective representation on the other hand and then decide whether it is worth sacrificing the right of the detenu of making an effective representation, assured to him under Article 22 (5) of the Constitution of India. There is nothing to indicate this exercise having been undertaken. The affidavit does not disclose that the detaining Authority has considered any contemporaneous material to satisfy itself about the genuineness of the fear expressed by the witnesses or to indicate that the detaining Authority has considered the need for exercise of the power under Section 9 (2) as against the right of the detenu of making an effective representation.

8. In this view of the matter the detention order would suffer from the vice of improper exercise of powers under Section 9 (2) effecting the right of detenu of making effective representationand thereby, infringement of his right assured under Article 22 (5) of the Constitution of India. The result is that the continued detention of the detenu petitioner would stand vitiated.

9. The petition therefore deserves to be allowed and the same is allowed. The order impugned herein passed by the Commissioner of Police, City Ahmedabad is hereby quashed and set aside. The detenu - petitioner - Mishram @ Raju Pukhraj Purohit shall be set at liberty forthwith, if not required in any other case. Rule is made absolute. No Costs.

(A.L. DAVE,J.)

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